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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **OAKLAND DIVISION**
12

13 In re RIPPLE LABS, INC. LITIGATION

Case No. 4:18-cv-06753-PJH

14 **XRP HOLDERS' MOTION FOR**
15 **LEAVE TO FILE AN**
16 ***AMICUS CURIAE* BRIEF IN**
17 **SUPPORT OF DEFENDANTS'**
18 **OPPOSITION TO LEAD**
19 **PLAINTIFF'S MOTION**
20 **FOR CLASS CERTIFICATION**

21 This Document Relates to:

Date: April 26, 2023
Time: 1:30 p.m.
Ctrm: 3

22 All Actions

23 Consolidated FAC Filed: March 25, 2020
24 Trial Date: July 17, 2023
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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT Jordan Deaton, James Lamonte, Tyler Lamonte, Mya
3 Lamonte, Mitchell Mckenna, Kristiana Warner, SpendTheBits, Inc., and all other similarly
4 situated XRP Holders (a known putative class of 75,890) (“XRP Holders”), respectfully move
5 the Court for leave to file a brief as *amici curiae* in support of Defendants’ Opposition to
6 Plaintiff’s Motion for Class Certification (Dkt. No. 201). A copy of XRP Holders’ proposed
7 *Amicus* Brief is attached as Exhibit A.
8

9 The Plaintiff opposes XRP Holders’ request for leave. The Defendants consent.
10 Plaintiff’s opposition to the request to file an *Amicus* Brief - alone - demonstrates that the
11 interests of XRP Holders, and a known identifiable class of over seventy-five thousand, all
12 satisfying the very definition of Plaintiff’s Proposed Class, will not be pursued, or protected,
13 unless this Court grants leave to file the proposed *Amicus* Brief.
14

15 I. LEGAL STANDARD

16 This Court has broad discretion to grant leave for interested nonparties to file briefs as
17 *amici curiae*. See *Inst. Of Med. Educ., Inc. v. W. Ass’n of Sch. & Colleges*, No. 11-CV-05755-
18 LHK, 2013 WL 6672443, at *3 n.1 (N.D. Cal. Dec. 18, 2013). The Court’s discretion is
19 generally exercised liberally as “[t]here are no strict prerequisites that must be established prior
20 to qualifying for amicus status.” *Woodfin Suite Hotels, LLC v. City of Emeryville*, No. C 06-1254
21 SBA, 2007 WL 81911, at *3 (N.D. Cal. Jan. 9, 2007). XRP Holders need merely to show that
22 their “participation is useful or otherwise desirable to the court.” *Id.* “District courts frequently
23 welcome amicus briefs from nonparties concerning legal issues that have potential ramifications
24 beyond the parties directly involved or if amicus has unique information or perspective that can
25 help the Court beyond the help that the lawyers for the parties are able to provide.” *NVG*
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1 *Gaming, Ltd. v. Upstream Point Molate, LLC*, 335 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005)
 2 (citation omitted).

3 Because no Federal Rule of Civil Procedure applies to motions for leave to appear as
 4 *amicus curiae* filed in district courts, courts often look for guidance from Fed. R. App. P. 29,
 5 which applies to *amicus* briefs in federal appellate cases. *See, e.g., Am. Humanist Ass’n v.*
 6 *Maryland Nat’l Capital Park & Planning Comm’n*, 147 F. Supp. 3d 373, 389 (D. Md. 2015).
 7 Rule 29 requires prospective *amici* to file a motion, attaching the proposed brief, stating “the
 8 movant’s interest” and “the reason why an amicus brief is desirable and why the matters asserted
 9 are relevant to the disposition of the case.” Fed. R. App. P. 29(a)(3). Courts freely permit the
 10 filing of *Amicus* Briefs when they help the Court’s decision-making. *Id.*

11 **II. IDENTITY OF PROPOSED AMICUS CURIAE AND STATEMENT OF INTEREST**

12 Proposed *amici curiae* are six individual XRP holders, and SpendTheBits, Inc (“STB”), a
 13 company that has integrated the XRP Ledger (“XRPL”) utilizing XRP in a payments’ application
 14 business. Proposed *amici* represent the interests of a growing putative class of XRP holders from
 15 the United States and 143 other countries, consisting of users, investors, holders, developers,
 16 content providers and small businesses all who acquired and utilize XRP and the XRPL, most of
 17 whom were unaware of Ripple or its executives when acquiring XRP. Today, the putative class
 18 stands at 75,890. Because XRP Holders represent such a significant public interest, they were
 19 granted *amici curiae* status in *SEC v. Ripple, Labs, Inc. et al.*, Case No. 1:20-cv-10832 (AT)
 20 (S.D.N.Y. 2020) (“SEC Action”). *See* SEC Action ECF No. 372. Separately, STB was also
 21 granted *amicus curiae* status. *See* SEC Action ECF No. 684.

22 On December 22, 2020, the Securities and Exchange Commission (“SEC”) filed an
 23 enforcement action against Ripple Labs, Inc. (“Ripple”) and two of its executives, alleging
 24

1 substantially the same claims being asserted by the Plaintiff here. *See* SEC Action ECF No. 4.
2 Because the SEC’s allegations (like the one’s here) are not limited to direct sales by Ripple, but
3 rather include all sales of XRP, including secondary sales independent of Ripple, XRP Holders
4 filed a Motion to Intervene as Defendants in the SEC Action. *See* SEC Action ECF No. 123.
5 Remarkably, when proposed *amici* filed their Motion to Intervene, over 12,600 XRP holders
6 requested to join. SEC Action ECF No. 123 at n.1. Judge Torres, presiding over the *SEC* Action,
7 denied the Motion to Intervene but recognized that XRP Holders maintain a significant interest
8 in the outcome of the case and granted XRP Holders *amici curiae* status because XRP Holders
9 “represent third parties whose particular interests may be affected by the Court’s ruling and
10 whose particular interests are echoed in broader public interests.” *See* SEC Action ECF No. 372
11 at 9-10. Because both Ripple and the SEC opposed class certification and XRP Holders
12 conceded certification would delay the case, Judge Torres did not consider class certification and
13 granted *amici* status to the six XRP Holders in their individual capacities. *Id.* at n.1. The parties
14 and amici are awaiting Judge Torres’ decision on cross-motions for summary judgment. XRP
15 Holders filed an *Amicus* Brief in Opposition to the SEC’s Motion for Summary Judgment (SEC
16 Action ECF No. 708), while STB filed an Amicus Brief in Support of Ripple’s Motion for
17 Summary Judgment (SEC Action ECF No. 684).

18 Plaintiff’s Motion for Class Certification (Dkt. No. 181) - as proposed - threatens to cause
19 substantial harm to XRP Holders. The Lead Plaintiff moves the Court for certification of a class
20 that includes: “All persons or entities who purchased XRP from May 3, 2017 through the present
21 and who have (a) retained the XRP, and/or (b) sold the XRP at a loss.” Dkt. No. 181 at 2. This
22 class definition, if approved and certified, would include proposed *amici* and the other 75,890
23 XRP holders proposed *amici*’s interests represent. The proposed class includes all XRP holders
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1 from May 3, 2017, who acquired XRP, regardless of the seller or the circumstances surrounding
 2 the sale and includes XRP holders who acquired XRP for non-investment reasons such as
 3 consumptive use. As the proposed brief demonstrates, Plaintiff does not adequately represent the
 4 proposed class or the putative class of 75,890 known XRP holders. In fact, unlike proposed *amici*
 5 and the other 75,890 known XRP holders, the Plaintiff is NOT an actual XRP holder. Lead
 6 Plaintiff Sostack is a day-trader who speculates on momentary price fluctuations of multiple
 7 digital assets, including XRP. Def. Opp., Dkt. No. 201. Unlike the Lead Plaintiff, who held XRP
 8 for less than two weeks, proposed *amici* and the tens of thousands of other XRP holders they
 9 represent, are long-time users and holders of the digital asset XRP.
 10

11 **III. AMICI CURIAE'S UNIQUE PERSPECTIVE WILL HELP THE COURT**

12 XRP Holders' perspective is unique and very different from the parties. As for Lead
 13 Plaintiff, he purchased XRP between January 1st and 16th, 2018 and sold that XRP between
 14 January 9th and 17th, 2018. Dkt. No. 63 at ¶ 13. In sum, he owned XRP for only two weeks
 15 MORE THAN FIVE YEARS AGO. Proposed *amici* and the other 75,890 XRP holders,
 16 presently own XRP. Furthermore, the technological advancements related to the XRPL, and the
 17 use cases for XRP, all developed independent of the Defendants, have exploded since Lead
 18 Plaintiff briefly owned XRP in 2018. In other words, 2018's XRP is not the same as 2023's
 19 XRP. Many different XRP holders acquired XRP for many different reasons – reasons
 20 apparently unknown (or ignored) by Plaintiff.
 21

22 Today, XRP Holders and millions of others, use XRP as a substitute for fiat and as a form
 23 of currency to buy everyday items at Walmart, Amazon, Target and countless other locations.
 24 See e.g., *Introducing the XRP MasterCard Debit Card*, available at [https://medium.com/global-](https://medium.com/global-id/introducing-the-xrp-mastercard-debit-card-827c0b37445b)
 25 [id/introducing-the-xrp-mastercard-debit-card-827c0b37445b](https://medium.com/global-id/introducing-the-xrp-mastercard-debit-card-827c0b37445b); see also, *UpHold's New Debit*
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1 *Card Lets You Pay With XRP*, available at, [https://cointelegraph.com/news/upholds-new-debit-](https://cointelegraph.com/news/upholds-new-debit-card-lets-you-pay-with-bitcoin-xrp-and-gold)
 2 [card-lets-you-pay-with-bitcoin-xrp-and-gold](https://cointelegraph.com/news/upholds-new-debit-card-lets-you-pay-with-bitcoin-xrp-and-gold). Thousands of vendors, like Time Magazine, accept
 3 XRP as a form of payment or medium of exchange. *See Time Magazine Will Accept*
 4 *Cryptocurrencies*, available at [https://www.theblock.co/linked/102166/time-magazine-bitcoin-](https://www.theblock.co/linked/102166/time-magazine-bitcoin-digital-subscription-payments)
 5 [digital-subscription-payments](https://www.theblock.co/linked/102166/time-magazine-bitcoin-digital-subscription-payments); *see also Pay With XRP*, available at [https://cryptwerk.com/pay-](https://cryptwerk.com/pay-with/xrp/)
 6 [with/xrp/](https://cryptwerk.com/pay-with/xrp/) (listing 1,500 plus companies accepting XRP as a payment and helping users “[f]ind
 7 where to spend [their] XRP.”).

9 Plaintiff fundamentally misunderstands (or is choosing to ignore) the very nature of an
 10 open, permission-less distributed ledger blockchain technology. This Court will benefit from
 11 XRP Holders’ participation because Plaintiff misunderstands what constitutes a truly
 12 decentralized network such as the XRPL. *See* Complaint, Dkt. No. 63, ¶ 3. In fact, SpendTheBits
 13 is a foreign for-profit company based out of Alberta, Canada that designed an application to
 14 transfer Bitcoin on the decentralized, open-source blockchain technology of the XRPL without
 15 Ripple’s knowledge, consent or assistance. For STB, XRP Holders and the 75,890 they
 16 represent, the only difference between Bitcoin (not considered a security) and XRP, is that XRP
 17 is a better version of Bitcoin and thus should be legally treated the same.

19 . Plaintiff’s Proposed Class Certification includes **ALL** holders of XRP, including users of
 20 the XRPL. XRP is used by XRP Holders to move money from the U.S. to Africa, Mexico,
 21 Thailand, Brazil, the Philippines, all of Asia, and other cross-border destinations where XRP
 22 holders send peer-to-peer payments utilizing XRP. XRP is also used as payroll currency by
 23 multiple companies. BitPay, for example, launched a massive crypto payments service for
 24 businesses in 225 countries and allows people to be paid in cryptocurrencies including Bitcoin,
 25 Ether, **XRP**, Litecoin, Bitcoin Cash and others. *See Connecting with Bitpay*,
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1 <https://support.bigcommerce.com/articles/Public/Connecting-with-BitPay>. Plaintiff is either
 2 unaware of these technological advances involving XRP or is choosing to ignore XRP's vast use
 3 cases that clearly do not trigger or involve U.S. securities laws. XRP Holders, on the other hand,
 4 can serve as a true *friend of the Court*, ensuring that the Court is aware of such information that
 5 will undoubtedly impact the Court's decision on the Proposed Class Certification.
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7 The Defendants are also ill-equipped to provide the Court with XRP Holders' unique
 8 perspective. In fact, in a sworn interrogatory in the SEC Action, Ripple admitted that it "does not
 9 have knowledge of all current and potential 'uses' and 'functions' of XRP, and such information
 10 is outside of Ripple's possession, custody or control." *See* SEC Action ECF No. 165-4. In fact,
 11 when the SEC asked Ripple to list all known use cases for XRP, Ripple responded by referring to
 12 a letter motion put forward by counsel for proposed *amici*. *Id.* (Citing a Letter from Attorney
 13 John Deaton on behalf of XRP Holders to Judge Analisa Torres re: Intention to Intervene (Mar.
 14 19, 2021) (SEC Action ECF No. 75 at 4) (Noting "literally hundreds of developers using XRP
 15 and the XRPL[, where] the vast majority of these developers have never had any contact with
 16 Ripple or its executives" among a list of eight uses for XRP, a "few examples of how XRP
 17 Holders utilize XRP without Ripple's knowledge or input")). STB is a perfect example of the
 18 open, permission-less, and decentralized nature of the XRPL, because if STB were to scale, it
 19 could, in theory, "become a competitor to Ripple's ODL system that also runs on the XRPL."
 20 *See* SEC Action ECF No. 684 at 11.
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23 Considering the above, Judge Torres determined that "[proposed amici] may view XRP
 24 differently from Defendants and thus may stress different arguments...and...will provide the
 25 Court **with a meaningful perspective and** will help ensure 'complete and plenary presentation
 26 of difficult issues **so that the [C]ourt may reach a proper decision.'**" *See* SEC Action ECF No.
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372 at 9-10 (emphasis added). Clearly, XRP Holders will provide this Court with a “perspective that can help the Court beyond the help that the lawyers for the parties are able to provide.” *NVG Gaming, Ltd.*, 335 F. Supp. 2d at 1067.

Additionally, XRP Holders can offer this Court the perspective of a decentralized XRP user and investor, whose purchase of XRP, without knowledge of and unconnected to Ripple, meets the Proposed Class definition offered by Plaintiff and whose property interests will be significantly harmed if such a sweeping class were certified.

In the SEC Action, XRP Holders submitted approximately thirty-five hundred XRP Purchaser Affidavits for the Court’s consideration. *See* SEC Action ECF No. 665-1-26; *also attached to* Def. Opp., Dkt. No. 201, Ex. 26-51. Unlike Lead Plaintiff, XRP Holders offer the perspective of the user and/or investor who does not rely on Ripple to achieve a financial profit – yet those XRP holders would be captured by the proposed class definition.

XRP Holders’ perspective on why a proposed “Opt Out” would not protect XRP Holders will also assist the Court, as well. The proposed brief demonstrates how XRP holders utilize XRP as collateral to obtain financing for a fiat loan and how they “stake” (i.e. loan) their XRP and earn interest. *See e.g., Binance Earn*, available at <https://www.binance.com/en/earn/xrp> (offering XRP holders yield on their XRP); *also, Get a Loan Backed By Your XRP*, available at <https://coinloan.io/cryptobacked-loans/xrp-loan/> (allowing XRP holders to borrow cash at 4.9% annually). Many XRP Holders do not view XRP as an investment and acquired XRP for consumptive use. *See* Def. Opp., Dkt. No. 201, Ex. 26-51.

XRP Holders also offer the perspective of the XRPL user and its decentralized exchange (“DEX”). *Id.* When utilizing the XRPL, XRP is a tool for payment transfers or serves as a bridge currency. *Id.* *Anyone* can access the XRPL and transfer value in the form of fiat currencies,

1 NFTs, or other cryptocurrencies to anyone without the need to utilize an intermediary such as a
 2 bank or money transmitter (e.g., Western Union or MoneyGram). *See “Direct XRP Payments”*
 3 XRPL.org, <https://xrpl.org/direct-xrppayments.html>. Ironically, the Chairman of the SEC, prior
 4 to becoming Chairman, publicly described XRP as a “bridge currency.” *See Gary Gensler*
 5 *Comments*, at Peterson Institute for International Economics, September 26, 2018, at
 6 <https://youtu.be/v0zAadukczY> at 1:29.

8 XRP Holders can also offer this Court the perspective of a decentralized XRPL
 9 Developer. There are literally hundreds, if not thousands, of XRPL developers, with no
 10 connection to Ripple, running applications on the XRPL, like STB. Many of these developers are
 11 represented in the 75,890 known XRP holders. Some of these developers submitted XRP
 12 Purchaser Affidavits in the SEC action. *See* SEC Action ECF No. 665-1-26; *also attached to*
 13 *Def. Opp.*, Dkt. No. 201, Ex. 26-51. Understanding, the decentralized structure of the XRPL is
 14 critical because anybody from anywhere can submit transactions on the XRPL. Yet, Plaintiff’s
 15 Proposed Class captures all of these worldwide users and holders of XRP.

17 Because Plaintiff only owned XRP for two weeks five years ago, he wrongly asserts that
 18 “XRP is not decentralized like Bitcoin.” Complaint, Dkt. No. 63, ¶ 3. XRP Holders can
 19 demonstrate that a major reason independent developers from around the world use the XRPL
 20 (like STB) is because unlike the Bitcoin Network, the XRPL contains the world’s first
 21 established DEX. *See “Behind the Scenes of the XRPL Dex.”* DEV Community,
 22 <https://dev.to/rippledev/behind-the-scenes-of-the-xrpl-dex-4jb>. The DEX enables the user on
 23 the ledger to buy, sell or trade any asset—including Bitcoin, Ether, stable-coins, XRP,
 24 DogeCoin, and other digital assets and even physical units of value such as gold. *Id.* This allows
 25 users of the DEX and the XRPL to trade well-established commodities (e.g., Gold and Bitcoin)
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1 and other commodity-like assets (XRP, Ether, etc.) without using an intermediary such as a bank
2 or other financial institution and certainly, without needing the Defendants *Id.*

3 Over a year ago, Judge Torres granted XRP Holders *amici* status. XRP Holders’
4 involvement allows them to serve as a friend to this Court and “assist the Court in reaching the
5 right decision in a case affected with the interest of the general public.” *Russell v. Bd. of*
6 *Plumbing Examiners*, 74 F. Supp. 2d 349, 351 (S.D.N.Y. 1999). XRP Holders offer this
7 Honorable Court, similar assistance.
8

9 IV. CONCLUSION

10 Plaintiff’s Motion for Class Certification, if granted, will significantly harm the
11 interests of proposed *amici* and the 75,890 XRP Holders they represent. Considering that the
12 Plaintiffs in this case are alleging the same arguments as the SEC, Judge Torres’s conclusion that
13 XRP Holders represent third parties whose particular interests may be affected by the Court’s
14 ruling, equally applies to this case. The fact that proposed *amici* represent the interests of over
15 75,000 XRP holders, compared thus far, to only a few identified by the Plaintiffs, XRP Holders’
16 participation “will provide the Court with a meaningful perspective and will help ensure
17 complete and plenary presentation of difficult issues so that the court may reach a proper
18 decision.” SEC Action ECF No. 372 at 9-10. The mere fact that Plaintiff opposes this motion
19 demonstrates that the interests of XRP Holders will not be protected by Plaintiff.
20

21 For these reasons, proposed *amici* respectfully request that the Court grant their Motion
22 for Leave to File a Brief as *Amici Curiae* in Support of the Defendants’ Opposition to Lead
23 Plaintiff’s Motion for Class Certification (Dkt. No. 201). The proposed Amicus Brief presents
24 the valuable perspective of the XRP holders who could be substantially harmed by the Court’s
25 decision.
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1 Dated: February 10, 2023

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